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Counsel for Peerless Network, Inc.

Counsel for CenturyLink Communications, LLC

Re: CenturyLink Communications, LLC, et al. v. Peerless Network, Inc., et al.
Bureau ID No. EB-22-MD-002, Proceeding No. 22-172

Released April 26, 2022

By the Deputy Chief, Market Disputes Resolution Division, Enforcement Bureau:

Introduction

This letter ruling delineates the procedures that will be used to effectuate the primary jurisdiction referral order arising from *CenturyLink Communications, LLC, et al. v. Peerless Network, Inc., et al.*, Case No. 18-cv-03114 (N.D. Ill.) (Court Proceeding).¹ We establish these procedures following our review of the Referral Order and pleadings in the Court proceeding and the parties' written submissions regarding their views about the procedure to effectuate the primary jurisdiction referral.² Considering relevant factors of law, policy, and practicality, and our experience handling primary jurisdiction referrals, we order the parties to proceed as follows to effectuate the Court's referral.

¹ Memorandum Opinion and Order, *CenturyLink Communications, LLC, et al. v. Peerless Network, Inc., et al.*, Case No. 18-cv-03114 (N.D. Ill.) Dkt. 247 (Mar. 1, 2022) (Referral Order).

² See Letter to Anthony J. DeLaurentis, FCC, EB, MDRD, from Henry T. Kelly, Counsel for Peerless (Apr. 18, 2022); see also Letter to Anthony J. DeLaurentis, FCC, EB, MDRD, from Charles W. Steese, Counsel for CenturyLink (Apr. 21, 2022).

1. Pursuant to section 208 of the Act and rules 1.720-1.740 (as modified below), 47 CFR §§ 1.720-1.740, CenturyLink shall file a formal complaint against Peerless in the above-referenced proceeding that raises the following issues for the Commission to address:

- (a) what percentage of Peerless's traffic is OTT-VoIP;
- (b) whether Peerless may assess tandem switching charges in lieu of end office charges on OTT-VoIP calls; and
- (c) whether Peerless's interstate access tariff can be interpreted to permit Peerless to assess tandem switching charges on OTT-VoIP calls.

2. The proceeding shall be governed by the Commission's formal complaint rules, with the exception of the following rules, which we hereby waive for good cause:

- (a) 47 CFR § 1.723: CenturyLink intends to pursue damages in the Court Proceeding and not in this proceeding. Consequently, the requirements of section 1.723 do not apply.
- (b) 47 CFR § 1.730: Based upon the parties' representations, staff understands that there is no need for discovery in this case. Consequently, the requirements of section 1.730 do not apply. If a party comes to the view during the course of the litigation that discovery is warranted, it shall file a motion requesting such discovery.
- (c) 47 CFR §§ 1.722(i), 1.726(f), 1.728(d): Because there is no need for discovery in this case, the information designation requirements of sections 1.722(i), 1.726(f), and 1.728(d) are unnecessary and do not apply. The parties are required, however, to include an index of all exhibits attached to and referenced in the complaint, answer, and reply.

3. The parties shall confer and jointly request that the Commission accept into the record of its complaint proceeding relevant pleadings and discovery materials filed or produced in the Court Proceeding. The parties shall coordinate with Commission staff prior to the filing of their joint motion to address any questions or issues relating to the size of this filing.

4. The parties shall confer and stipulate to two simple call flow diagrams for the Peerless traffic at issue in the Court's referral. These diagrams can be filed before the complaint is filed or with it.

- (a) The first diagram should reflect a typical call flow between the parties when a traditional LEC is involved using TDM technology to exchange calls.
- (b) The second diagram should depict when an OTT-VoIP provider takes the place of the LEC in the call flow, presumably using IP technology.
- (c) Both diagrams should indicate the following:
 - i. Which facilities and equipment are carrying calls using TDM and/or IP technology.
 - ii. The physical end office switch and tandem switch to the extent such facilities are used in the call flow.

- iii. For the OTT-VoIP call flow diagram, the parties should show the extent to which an unaffiliated ISP like Comcast is involved in the call flow diagram.
 - iv. The diagrams should also show who owns the physical tandem switch, the extent to which Peerless provides tandem switching services and/or bills CenturyLink and/or Level 3 for those services, and who owns the physical last mile connection to the end user.
 - (d) Both diagrams should indicate (or in explanatory notes describe) where tariffed access charges are being applied for calls exchanged between the parties – which tariff (including section numbers), which services, who is charging, who is being charged. Similarly, if charges in commercial agreements are being applied for any of the calls exchanged between the parties, the agreements should be identified, as well as who is charging, what is being charged, and who is being charged.
 - (e) The parties can note on the diagrams where they disagree and how.
5. CenturyLink shall file this letter ruling as an exhibit to its formal complaint.
6. CenturyLink shall provide Peerless and Commission staff with as much advance notice as possible regarding the date on which it plans to file its formal complaint.

This letter ruling is issued pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, sections 1.3 and 1.720-1.740 of the Commission's rules, 47 CFR §§ 1.3 and 1.720-1.740, and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311.

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